IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8396 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOPALBHAI MANJIBHAI PATEL & 1 - Petitioner(s)
Versus
MOHANBHAI UKHEDBHAI PATEL & 1 - Respondent(s)

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Appearance :
MR PJ VYAS for Petitioner(s) : 1 - 2.
MR RK MISHRA for Respondent(s) : 1,
MS MD MEHTA, ASSTT GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 21/03/2007

ORAL JUDGMENT

1. The short facts of the case are that the Will was executed by Bodiben on 1.3.1990 giving her property to Mohanbhai- respondent No.1. After the death of deceased Bodiben, Entry No. 3653 was mutated in the revenue record on 21.8.1991 based on

the Will and it was certified on 14.10.1991. The petitioners challenged the entry by preferring Appeal No. 55 of 1993 before the Deputy Collector, who, vide order dated 30.10.1993, cancelled the entry and remanded the case to the Mamlatdar for holding the inquiry afresh. Respondent No.1, against the order of the Deputy Collector, carried the matter before the Collector, being Revision No. 191 of 1993, who, vide order dated 16.8.1994, rejected the revision. It appears that the matter was further carried in revision by respondent No.1 before the State Government, being No. 87 of 1994, and the State Government allowed the revision and restored Entry No. 3653 in the revenue record and it is, under these circumstances, the present petition.

2. I have heard Mr. Vyas for the petitioners, Mr. M.B. Rana with Mr. Mishra for respondent No.1 and Ms. M.D. Mehta, learned Assistant Government Pleader, for respondent No.2.

3. Upon hearing the learned advocates appearing for both the sides, it appears that it is not in dispute that, for challenging the legality and validity of the Will and for asserting the right in the property, the petitioners have preferred Civil Suit No. 19 of 1992 in the Court of Civil Judge (J.D.), Dharampur and the said suit was pending at the time when the matter came to be considered by the State Government. It appears that the State Government has proceeded on the basis that the legality and validity of the Will

cannot be gone into by the revenue authority and until proper declaration is made by the Civil Court that the Will is bogus or that the legal heirs of the author of the Will had right in the property, entry should be allowed to be continued in the revenue record. Such a view taken by the State Government in the revisional jurisdiction cannot be said as by committing jurisdictional error nor can be said that the exercise of the discretion by the State Government is so perverse, which may call for the interference by this Court under Article 227 of the Constitution.

4. Mr. Vyas, learned counsel for the petitioners, lastly submitted that the clarification may be made by this Court that Entry No. 3653 shall be subject to the final order, which may be passed by the Civil Court in the proceedings of Civil Suit No. 19 of 1992. The learned counsel for respondent No.1 is not in a position to dispute the preposition that the entry in the revenue record is even otherwise to remain subject to the outcome of the proceedings in the civil suit.

5. It appears that as such, the observations of the State Government in the revision are to the extent that until the proper declaration is made of the Civil Court, entry based on the Will be continued. Therefore, the real effect of the order of the State Government is that Entry No. 3653 in the revenue record would continue until the final decision of the

Civil Court. Even otherwise also, the decision of the Civil Court is to supersede the revenue entry since the final adjudication is to be made by the Civil Court qua the rights of the respective parties in the property. Therefore, this being clear position, if such clarification is made, no serious prejudice is caused to the either party.

6. In the above circumstances, the order of the State Government for continuing with Entry No. 3653 in the revisional jurisdictional is not interfered with. However, it is further clarified that Entry No. 3653 shall continue to remain in the revenue record subject to the final decision, which may be taken by the Civil Court in the proceedings of Civil Suit No. 19 of 1992, and the rights of the parties pertaining to the entry shall stand finally governed by the decision of the Civil Court.

7. The petition is partly allowed to the aforesaid extent considering the facts and circumstances. Rule is made absolute accordingly with no order as to costs.

Sd/-

(JAYANT PATEL, J.)

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